

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.756 of 2007

Ramesh alias Karunakaran .. Petitioner/Detenu

Vs.

1. The Secretary to Government
of Tamil Nadu
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Collector and
District Magistrate
Villupuram District
Villupuram.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus Calling for the records of the detention order made in C-2/9104/2007 dated 01.03.2007 passed by the District Collector and District Magistrate, Villupuram District Villupuram the Second Respondent herein and set aside the same and direct the respondents to produce the detenu Ramesh @ Karunakaran, S/o. Raman, now confined in Central Prison, Cuddalore before this Honble Court and set the detenu Ramesh @ Karunakaran at liberty.

For Petitioner : Mr.R.Balakrishnan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he

has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention dated 1.3.2007 was passed on the basis of ground case in Crime No.57 of 2007 for alleged commission of offences under Sections 392 read with 397 of the Indian Penal Code. The allegation against the detenu was that on 12.2.2007 at about 7.00 p.m., when one Ramesh was driving his car bearing registration No.TN-67-8242 from Kachirapalayam to Thiyyagadurgam, near sugar factory at Kallakurichi Road, the detenu and his associates waylaid the car, brandished knives at Ramesh, pulled him out of the car and the detenu put a knife on the neck of Ramesh and demanded as to what he had possessed in his pocket. One of the associates of the detenu threatened to kill him and snatched Nokia mobile from his shirt pocket and another associate snatched Rs.1200/- from his pant pocket. The said Ramesh started shouting and on hearing the same the nearby people came to spot. At that time the one of the associates of detenu instructed the detenu to kill if anybody comes near to catch him. All of them brandished knives so saying that the entire people of Salem District are afraid of them and that if anybody dared to come and catch them, they would kill them. The shop keepers downed the shutters out of fear. The vehicular traffic came to a standstill. The detenu and his associates escaped. On the complaint of the said Ramesh, the crime was registered at Kachirapalayam Police Station. That apart, the detaining authority also took note of the adverse case pending against the detenu in Crime No.78 of 2007 on the file of Chinnasalem Police Station for the offence punishable under Section 392 of the Indian Penal Code. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an "Goonda" and was kept in custody at Central Prison, Cuddalore.

3. Challenging the said detention, the petitioner has filed the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the detention order made in C.2/9104/2007, dated 1.3.2007 passed by the second respondent, to set aside the same and to direct the respondents to set him at liberty.

4. Heard Mr.R.Balakrishnan, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation dated 15.5.2007 and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in

disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N.*, (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 1.3.2007. A representation was made to the detaining authority on 18.5.2007. The detaining authority received the same on 22.5.2007 and remarks were called for on 23.5.2007. The representation was received from the Government Central Prison by the Collectorate on 28.5.2007. After obtaining the remarks of the Sponsoring Authority the report was sent to the Government and the file was considered by the Under Secretary and the Additional Secretary on 12.6.2007. However, the Hon'ble Minister (PWD and Law) dealt with the file on 21.6.2007, viz., after 9 days. Even though 16.6.2007 and 17.6.2007 happen to be public holidays, still a delay of 7 days exists. This delay was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for seven days, between 12.6.2007 and 21.6.2007. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad*, (1996) 3 SCC 194 is apposite:

"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

The towering delay of seven days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 18.5.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai - 9.
2. The District Magistrate and
District Collector, Villupuram District.
3. The Superintendent Central Prison, Cuddalore.
(In duplicate for communication to Detenu)
4. The Joint Secretary to the Government,
Public (Law and Order) Department,
Fort St George, Chennai 9.
5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. R. Balakrishnan, Advocate SR No. 58112

H.C.P.No.756 of 2007

AD(CO)
SR/3.10.2007